

**TO: C. BRUCE LOBLE
CHIEF WATER JUDGE
%MONTANA WATER COURT
PO BOX 1389
BOZEMAN, MT 59771-1389**

NOVEMBER 19, 2004

FILED

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**FROM: LARRY AND JANET LULOFF
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Montana Water Court

This communication is in support of having the Water Court review to include an "on-motion" practice. The Water Court should be able to file a motion to examine a water right on it's own merit. There is no reason to have inaccurate water claims be elevated to permanent status when the court has knowledge to prevent this from happening. The Court by it's very existence is obligated to protect the legitimate water claimants. Therefore, we respond to the following questions:

- 1) Should the Water court knowingly decree inaccurate or invalid water right claims because they are, by stature, prima facie proof of their contents? **NO**
- 2) Do you think the Water Court should review claims on its own motion when no objections are filed against them? **YES**
- 3) If yes, what criteria or rules of procedure should the Court use in doing so?

--NOTIFICATION TO THE CLAIMANT OR REPRESENTATIVE OF UPCOMING "ON-MOTION" EXAMINATION OF CLAIM.

--PUBLIC NOTICE BY ADVERTISEMENT. THIS WOULD ADVISE POSSIBLE OBJECTORS THAT MAY HAVE INFORMATION IN SUPPORT OF THE WATER COURT'S EXAMINATION OF THE CLAIM..

--A MISDEMEANOR TYPE CHARGE AND MONETARY FINE FOR THE SUBMISSION OF A PHONY CLAIM OR INVOLVEMENT IN A STIPULATION TO ESTABLISH A PHONY CLAIM.

In further support of the Water Court, we agree with the conclusion of the Chief Water Judge and his interpretation of the Montana Constitutional protection of the existing water rights. The Water Court is not obligated to settlement agreements. The Court has got to protect the legitimate water claimants from "back room" deals.

Therefore, in answer to the following questions:

- 1) Do you think the Water Court has any obligation to review settlement documents? **YES**
- 2) If the Water Court reviews settlement documents, what criteria or rules of procedure should the Court use in doing so? **THE WATER COURT IS OBLIGATED TO DETERMINE THAT ANY SETTLEMENT IS BASED ON A LEGITIMATE WATER CLAIM. THE WATER COURT MUST HAVE THE STATUTORY AUTHORITY TO DETERMINE**

THAT THE SETTLEMENT IS BASED ON A LEGITIMATE SUBSTANTIATED CLAIM.

3) If the Water Court requests assistance from the DNRC pursuant to section 85-2-243, MCA, what criteria or rules of procedure should the Court use in doing so? **WE SUPPORT THE WATER COURT IN ANY PROCEDURE THEY SHOULD DEEM LEGITIMATE, TIMELY, AND EQUITABLE.**

The following is our response to the upcoming submission by the Water Court to the Montana Supreme Court:

CHAPTER 1: INTRODUCTORY PROVISIONS:

RULE I.II. WATER COURT PROCEDURES

5.c. - Objections: THERE SHOULD NOT BE A TIME LINE FOR FILING OF LEGITIMATE, SUBSTANTIATED OBJECTIONS.

31.f. - Water Court decree enforcement: THE WATER COURT SHOULD BE INSTRUMENTAL IN IMPLEMENTING A SIMPLE EDUCATION PROCESS FOR DISTRICT JUDGES TO KEEP THEM KNOWLEDGEABLE ON THE LEGISLATIVE CHANGES IN WATER RIGHTS.

CHAPTER 2: IRRIGATION CLAIM:

RULE 2.I PURPOSE

5.e. 1 & 2 - THE WATER COURT SHOULD ESTABLISH CRITERIA FOR ABANDONMENT AND NON-PERFECTION OF A WATER CLAIM.

RULE 2.VIII: PRIORITY DATE

4.k - A CRITERIA SHOULD BE ESTABLISHED TO DEAL WITH ALLOCATION OF WATER TO MECHANICAL IRRIGATION DISTRIBUTION THAT WAS NOT AVAILABLE WHEN MOST PRE-1973 DECREES AND APPROPRIATIONS WERE ESTABLISHED. THESE PUMPS TAKE WATER BEYOND LIMITS OF GRAVITY HAVE RESULTED IN SEVERELY DEWATERING THE STREAMS THAT ARE THE BASIS OF ALL WATER DECREES IN MONTANA. THE IRRIGATION PUMPS HAVE ALSO RESULTED IN WATER BEING APPLIED TO ACREAGE NOT IDENTIFIED IN THE DECREE. (i.e. THE BEST WATER RIGHTS ON THE RIVER ARE WORTHLESS IF THE RIVER IS DRY)

RULE 2.IX: FLOW RATE

2- THE FLOW RATE HAS GOT TO BE ADJUSTED FOR THE TYPE OF SOIL THE DELIVERY (DITCH) FLOWS THROUGH. IN SOME AREAS, HALF OF THE DECREED WATER IS LOST BEFORE EVER GETTING TO THE FIELD.

RULE 6.IX: SUPPLEMENTAL RIGHTS

THE COURT SHOULD ESTABLISH CRITERIA FOR SUPPLEMENTAL RIGHTS. ALL WATER IS SUPPOSEDLY OWNED BY THE STATE OF MONTANA AND DECREED TO A USER TO BE PUT TO BENEFICIAL USE. WE HAVE, IN THIS AREA, A COMBINATION OF DECREED RIGHTS AND SUPPLEMENTAL RIGHTS FROM COONEY RESERVOIR. SOME WATER USERS HAVE ACCUMULATED A LARGE NUMBER OF THESE COONEY RESERVOIR SUPPLEMENTAL RIGHTS, FAR MORE THAN THEY CAN USE ON THEIR LAND. THEY ARE NOW LEASING THESE RIGHTS TO OTHERS FOR A MONETARY PROFIT. THIS PRACTICE MUST BE STOPPED.

THANK YOU FOR ALLOWING US TO COMMENT.

*Larry Leloff
Janet Leloff*